

ORIGINAL

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January 22, 2004

By UPS overnight mail

Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit, Suite 713
1925 K Street, N.W.
Washington, DC 20423-0001

ENTERED
Office of Proceedings

JAN 23 2004

Part of
Public Record

209932

Re: Finance Docket No. 34425, *City of Lincoln - Petition for Declaratory Order*

Dear Mr. Williams:

Enclosed please find an original and 10 copies of Surrebuttal Statement, for filing with the Board in the above referenced matter.

Kindly acknowledge receipt by date stamping the enclosed duplicate copy of this letter and return in the self-addressed stamped envelope.

Very truly yours,

Tom McFarland

Thomas F. McFarland
Attorney for Lincoln Lumber Company

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BEFORE THE
SURFACE TRANSPORTATION BOARD



CITY OF LINCOLN -- PETITION FOR) FINANCE DOCKET
DECLARATORY ORDER) NO. 34425

209932

SURREBUTTAL STATEMENT

ENTERED
Office of Proceedings

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LINCOLN LUMBER COMPANY
P.O. Box 30373
Station A
Lincoln, NE 68503

Protestant

THOMAS F. McFARLAND
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Attorney for Protestant

Date Filed: January 23, 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD

CITY OF LINCOLN -- PETITION FOR	)	FINANCE DOCKET
DECLARATORY ORDER	)	NO. 34425

SURREBUTTAL STATEMENT

Pursuant to 49 C.F.R. § 1117.1, LINCOLN LUMBER COMPANY (LLC) hereby files this Surrebuttal Statement directed to the City of Lincoln's statement in its Rebuttal that it would accept a condition to approval of its Petition that would require that the trail be located in the northern-most 20 feet of the railroad right-of-way (ROW). This Surrebuttal Statement is accompanied by a motion for leave to file it.

Condemnation of LLC's ROW would be precluded by Federal law every bit as much if the condemnation were directed at the northern 20 feet instead of the locations of ROW originally proposed. Such a condemnation would still constitute an impermissible collateral attack on the Board's prior determination that this ROW is not subject to trail use. Such a condemnation would just as much unlawfully interfere with LLC's right to exclusive use of the full width of its ROW. Such a condemnation would no less constitute state regulation of rail transportation federally preempted under 49 U.S.C. § 10501(b).

Nor would a proposal to condemn the northern-most 20 feet of ROW instead of the original proposal eliminate the safety and efficiency problems associated with unloading I-Joists and dimension lumber from center-beam flat cars. A trail on the north edge of the ROW would not be practical because it would block access to doorways in buildings adjacent to the ROW; it

would run over existing railroad tracks near 22nd Street and between 19th and 21st Streets; and it would encounter numerous physical obstructions. These facts are explained in the Surrebuttal Verified Statement of Donald L. Hamill attached to this Statement.

WHEREFORE, the Board should find that a condition to approval of the Petition requiring that the trail be located on the northern-most 20 feet of the ROW would not eliminate the violations of federal law associated with the City's Petition, nor alleviate the adverse effects of that Petition on safety and rail efficiency as explained by Mr. Hamill.

Respectfully submitted,

LINCOLN LUMBER COMPANY
P.O. Box 30373
Station A
Lincoln, NE 68503

Protestant

Thomas F. McFarland

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Attorney for Protestant

Date Filed: January 23, 2004

SURREBUTTAL VERIFIED STATEMENT OF DONALD L. HAMILL

My name is Donald L. Hamill. I previously provided a verified statement in this proceeding in which my background and qualifications were described.

This surrebuttal statement is directed to the City's statement that it would accept a condition to approval of its Petition that would require the trail to be located in the northern-most 20 feet of the railroad right-of-way (ROW). That position was stated for the first time in the City's Rebuttal Statement. I have not had an opportunity previously to reply to that position.

For the reasons stated below, location of the trail in the northern 20 feet of the ROW would be impractical because the trail would block a number of doorways needed for access to buildings at 22nd Street and between 21st and 20th Streets; because the trail would run over existing railroad trackage near 22nd Street and between 21st and 19th Streets; and because the trail would encounter numerous physical obstacles in that portion of the ROW. I also explain that location of the trail at the northern edge of the ROW between Whittier and 22nd Street would not alleviate the safety and efficiency problems associated with unloading I-Joists and dimension lumber from center-beam flat cars.

BEFORE THE SURFACE TRANSPORTATION BOARD

Finance Docket 34425

CITY OF LINCOLN --
PETITION FOR A DECLARATORY ORDER

IF THE TRAIL WERE AT THE NORTHERNMOST EDGE OF THE PROPERTY between 22nd & Whittier Streets, it would not improve the efficiency in unloading long lengths such as I-Joists and other long length materials for the following reasons:

1. Mr. Schuchmann makes two suggestions of ways to unload these cars. He suggests that long material on the north side of the car, be taken from the car and set on the ground next to the rail car. It is at this point we have a problem. The I-Joists come packaged as shown in picture M-1. These packages are approx. 48" wide and up to 48' in length. The forks on the forklift are 48" long. On the first package, it could be taken off as suggested and set on the ground. To do each package, the forklift needs to be within approx. 6" of the rail car. The forks are shoved under the package and lifted off. When you set the 48" on the ground beside the rail car, you can no longer get to within the approx. 6" of the car. The forklift cannot get closer than 48" to the car. The 48" forks cannot reach any except the 1st package. See exhibit E from LLC. To unload this car the way Mr. Schuchman suggests, you would need to lay each package end to end on the north side. This would result in a line of I-Joists that was 675' long, which would be all the way from 23 to 22nd Streets. And the railcar would need to be moved 21 times. This is certainly not efficient and would double or triple our unloading time.

2. The second suggestion is no more efficient. The shortest length is 24'. With the trail in place, at even the widest point, we would have a minimum of 30'. In the area between Whittier and 22nd st., in the length of 110' the width drops from 30' to 7.5' at 22nd Street. Of the 7.5', a package of I-Joists which is 48" or 4' wide, there would only be 3' to maneuver the forklift. The forklift, without the fork length is 13' long from front wheel to back wheel. You can see from this that with the trail in place, we cannot unload any cars at all because we can't get a forklift between the trail and the railcar with enough room to maneuver or to set the package on the ground beside the car. Mr. Schuchmann suggests using a flatbed to move the long length. Like in suggest No. 1, the packages would need to be laid end to end and moved one at a time.

3. If the area north of the rail were a full 30', the problems would be the same as in No. 1 and No. 2. It is not possible to unload in a 30' width in an efficient manner because the long lengths would hang over the trail as shown in Exhibit U. The wider area east of 22nd St. would give more forklift room for unloading short lengths, but since the cars are stacked in a staggered configuration, it is not possible to unload all short lengths at one time, nor all the long lengths as one time. Exhibits 7-D, 8-D, 7-P, 8-P, 9-P, 10-P, 11-P, 12-P, 13-P, 14-P, 15-P, 16-P, 19-P, 20-P, 1-B, 2-B, 13-B, 14-B, 15-B, 16-B, 17-B, 18-B, 19-B, 21-B, 22-B, 23-B, 24-B, 1-M, 2-M, 3-M, 4-M, 5-M, 6-M, 7-M, 8-M, 9-M, 10-M, 11-M, 12-M, 13-M, 16-M, 17-M, 18-M, 19-M, 25-M, 26-M, 20-M, 30-M.

CONCLUSION: If the trail were at the northernmost edge of the property, and the facts and obstacles illustrate this cannot happen,

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The unloading of LLC center beam cars and long length materials as described by Mr. Schuchmann will not work. It is not efficient and the long lengths hanging over the trail presents a major safety hazard.

THE FOLLOWING OBSTACLES WOULD BE ENCOUNTERED IF THE TRAIL WAS IN THE NORTHERNMOST 20'.

Beginning at 23rd St. and RR ROW, note the person with a red hard hat directing traffic. (New trail/ rail plan. LLC Bypass July 1997. bottom picture on P. 5) Directly west of this picture is the parking lot for the east building of LHA holding 60 cars. Exhibits 15-D, 22-K, 34-M, 9-D. The 20' northernmost enters LLC property by removing a gate, cutting off or moving back a 150' building by 2 or 3 feet (Exhibit 17-P, 18-P, 14-M). Inventory will need to be moved to get to Whittier St. (Exhibits 7-D, 8-D, 17-P, 18-P, 8-M, 13-M, 14-M, 17-M, 10-A, 13-A, 15-A, 16-A).

From 23rd to Whittier, there are 3 major obstacles at the terminal area. First there is a red brick building which sets south of the property line by 8' (38-M). At this point the trail needs to move south to avoid running into a solid brick wall. The trail is then located in the northernmost 40' per plans submitted by the City. (Pictures 11-M, 10-M, 4-M, 5-M, P-1, P-2. Genrich 22d map)

South of the red brick building, the trail now sets on the northernmost 40'. This leaves 10' to centerline of track and 7.5' from the edge of the rail car and the edge of the trail. Within the area between the red brick building there are 3 utility poles carrying power lines, and one guy wire supporting one of the poles. This is per actual verified staked out by Don Hamill with flags, red for the south trail line, green for the center and red for the

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north line. The building creates a blind crossing at 22nd St. with no stop sign. The trail passes over the top of this RR spur for the full length, approx. 134'. (Pictures P-1, P-2, P-6, P-8, M-2, M-3, M-4, M-5, M-6, M-7, M-9, M-10, M-11, M-12, M-13, P-15, P-16, P-13, P-14.) See picture 9-B, 11-B, 12-B, and exhibit I which is 2 pages dated 12/19/03 by Bob Mitchell of The Rails Co. This shows the spur track being extended to the main line.

The red brick building is 12' from the edge of the trail and has 6 openings (2-4x7 walk doors, 2-12x12 overhead doors that are temporarily closed and 2 12x12 overhead doors that are being used) (Picture 9-B, 11-B, 14-B, 15-B, 17-B, 18-B, 21-B, 22-B, 4-B, 1-B)

West of 22nd within the northernmost 40', the trail jogs south 20' and does not return to the northernmost 20' for the balance of the trail (per trail map submitted by Terry Genrich). If we assume as the City states that the trail goes back to the northernmost 20' the obstacles include several utility poles which are in line with the 3 utility poles east of 22nd Street. There is a chain link fence between 22 & 21st (pictures 23-D, 3-P, 2-P).

There are RR signs at both 22nd & 21st, an upright guard at the base of the RR sign at 21st, and there is a utility pole on the east side of 21st St. approx. 3.5' south of the north property line, all in the path of the trail.

There is a hard-surface path from 22nd to 21st except for an area 44' long that is not hard-surfaced. There is a spur line between 19th and 21st on the north side of the main line that is approx. 400' long and crosses the main line between 19th and 20th. LLC could switch off cars on the north spur and the south spur of the main line. (see relay tie for this is 29-M). We are hoping to be able to move center beam cars over this spur (Pictures 26-M, 30-M.)

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This is where we plan the 2nd terminal area. Like the main line (picture 13-C) this RR spur that exists now and needs relaying should not be disrupted with a trail. All rail switches, frogs, cross over main line parts, going over the main line, etc. are available per abandonment & LLC purchase. See RR ties (picture 29-M) to be used in the new relay of this spur and rail over main line and creating spur south and west. LLC will construct and relay line like shown on the map duplicated as close as possible. It will be a very desirable terminal area for LLC. This is a major obstacle for the City in this northernmost 20'. While this is a serious obstacle for the City, it is a valuable asset for LLC's future terminal. The northernmost 20' would go right over the top of the north spur for approx. 400'. This spur line extends approx. 14' south from the north property line. This entire spur curve (full length of curve) is an important obstacle as well as 400' east and west.

Between 21st and 20th there is a large building with several overhead doors. The one being used is approx. 12x12' and has an access card for entry. The ramp in front of it is approx. 70' long and 17' wide. This door and ramp are operational and the ramp is in the ROW. Additionally there are 3 overhead doors that are temporarily blocked. In front of all of the doors are concrete docks which set out into the trail area. These overhead doors and ramps are evenly spaced along the south wall of this big and long building. Freight was brought in by rail from the north rail spur shown on the map.

Page 4 of the print drawn by Olsson Assoc. showing the layout of the bike trail shows the trail running between the main line and the spur on the north side of the main line between the building and the main line. Per actual measurements there is 24' between the

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north side of the main line and the south side of the spur.

Allowing 20' for the trail, we find we have to divide 4' between a spur and the bike trail, and between the bike trail and the main line. Even if we put all 4' between the main line and the bike trail, this is still short of the 10' requirement. The scale shows 10', but it is not accurate. This is definitely an obstacle. The City did not represent to STB coming within 2' of the rail spur and 2' of the main line. This is a very dangerous and unsafe situation and not feasible (Pictures P-2, P-6, M-11, B-12, B-9, P-1.)

COMPARISON OF ACTUAL SITE MEASUREMENTS WITH HUSKER LINK TRAIL MEASUREMENTS:

Beginning at the north property line, east of 22nd at the Engineer's flag 8' east of the red brick building and 8' north of the south side of the building and moving south (P-6, P-2, P-1, B-4, B-3, B-9, B-10, B-11, B-12, B-13, B-14, B-15, B-16, B-17, B-18, B-19, M-5, M-6, M-7, M-10, M-11).

	Actual site measurements (per red outside trail lines and green center line)	Illustrates 22nd St. Gedrich Grid Map Husker Trail Link (per scaling)
Jog south from N property line	8'	8'
From N property line to center of spur	13.5'	12.5'
Width of proposed trail	20.0'	20.0'
S edge rail spur to N edge of main line	24.0'	25.0'

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CONCLUSIONS OF ABOVE FACTS:

1. Don Hamill site measurements show trail going over the railroad spur for approx. 134' and the City shows the trail going south of the spur line approx. 5'. The City is wrong, misleading and false.
2. From north property line to center of spur track the City is off 1'. This spur line is a major obstacle for the City and a major asset for LLC.
3. South edge of the rail spur to north edge of the main line is actually 24', per Don Hamill actual measurements vs. the City's 25' per scale.
4. City is not the northernmost 20'. They scale out to be 7.5' to 8' at the most from the main line. This is a major obstacle. Per scale the City map shows the trail being the northernmost 25'. Per map the north edge of the trail is 25' south of the north property line. This is approx. 7.5 to 8' from the main line at this point and supports Don Hamill field measurements shown by the red flags, red outside lines and green center line. This distance of the trail of 7.5' from the main line is approx. 134' in length. This is a paramount obstacle being 7.5' from main line for approx. 134'. This is not planned by the City for safety. This is abandoning safety.
5. Three utility poles east of 22nd are shown on the map as being south of the trail line. This is wrong. They are inside the trail. Genrich Husker Link map shows 22nd & 23rd St. (P-2, P-6)
6. The northernmost 20' goes straight west from 22nd St. and continues to be 7.5' from the main line. The utility poles between 22nd and 21st are inside the trail. The main line for a full block and utility poles and chain link fencing are major

obstacles for the trail. Again, it is not safe to be close to the main line by being 7.5' away and poles present a non-safe situation. See poles in a stright line east and west of 22nd.(P-5)

CONCLUSION:

A lot of major obstacles are referred to above. Mr. Pedersen says on P1 ¶4 "The current plan provides for the trail predominately on the north side of the tracks at locations designed to avoid any interference with rail use and to minimuze any interference with any other business uses of the property". Wrong -see obstacles described above. There is proven interference and disruption for present and future. The trail presents the nonfeasible, inconsistency, and lack of safety.

Mr. Montange says P-11 "most certainly will not displace nor interfere with any rail facilities or uses" Wrong - see obstacles above.

Note - major unloading obstacles at terminal area north of Whittier St. It is unsafe for trail people and LLC employees. Note interference at 23rd St. entrance and just east of 22nd St. Note interference and disruption and unsafe conditions west of 21st St. with trail going over the top of LLC spur for approx. 400' and impacting west and future terminal.

Mr. Genrich P2 ¶4(a) "The City has concluded that this is the only feasible alternative - taking into account safety and continuity is to construct a trail along the old Missouri Pacific rail corridor from 30th St. (on the east side) to 18th Street (on the west side)". Wrong - see obstacles above. Mr. Genrich has a number of other very feasible alternatives that will add up to superior safety and continuity. 'Y' Street is safer. 'W' Street is safer. There are no obstacles, it is feasible and very

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beautiful. LLC has no other alternative. LLC needs the entire 100' width from 24th to 19th.

Conclusion - the northernmost 20' for a trail from 24th to 19th has a lot of obstacles, disruption, interference, lack of safety and it is not feasible. LLC has no other alternatives except for the 100' ROW between 24th & 19th for railroad needs, present and future. The City has many alternatives. Eminent domain in this situation is not reasonable or fair. LLC has been fair in helping the City. The other property owners benefit. Ask them to help and contribute to your trail needs.

City, I ask you to show some concern for LLC employees and customers. They don't want this eminent domain process for a trail. Lincoln Lumber has been a part of Lincoln for an estimated 120 years growing up around the MP railroad. Let's let what has worked for approx. 120 years continue to work for Lincoln.

STB, in view of the facts presented, deny the eminent domain pending for our property between 24th & 19th Streets for the full 100' width.

SUMMARY OF LETTERS SUPPORTING LLC RE: liability, unloading & Alt. tra:

12/9/03. Jerry Ogrøn, General Manager of Cushman, 1985-1996
RE: Alternate trail path

12/24/03. Frank Landis, Commissioner, State of Nebr. Public
Service Commission
RE: Alternate route

12/24/03. Bill Whittmer, ABC Electric, business east of LLC
RE: Alternate trail path

12/19/03. Hawkeye letter
RE: Unloading

12/15/03. Roberts & Dybdahl letter
RE: Unloading

12/12/03. Arman Nielsen, Sec. OLB RR, From Don Hamill, Pres.
and owner of LLC
RE: Unloading

12/20/03 Tommy Taylor, member City Planning Commission
RE: Alternate route and liability

12/24/03 Dean Pohlman, Indiana Lumbermens Insurace
RE: Liability

VERIFICATION

STATE OF NEBRASKA)
) SS:
COUNTY OF LANCASTER)

DONALD L. HAMILL, being duly sworn on oath, deposes and states that he has read the foregoing statement, that he knows the contents thereof, and that the facts therein stated are true and correct.

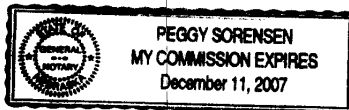
Donald L. Hamill

DONALD L. HAMILL

SUBSCRIBED AND SWORN to
before me this 20 day
of January 2004.

Peggy Sorensen
Notary Public

My Commission Expires:



CERTIFICATE OF SERVICE

I hereby certify that on January 22, 2004, I served the foregoing document, Surrebuttal Statement, on Charles H. Montange, 426 NW 162nd Street, Seattle, WA 98177, and Daniel A. LaKemper, Pioneer Railcorp, 1318 S. Johanson Rd., Peoria, IL 61607, by UPS overnight mail.

Thomas F. McFarland

Thomas F. McFarland